IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 789 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DY DIRECTOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 789 of 2000

MR DN PATEL for Petitioner No. 1

MR SS PATEL, APP for Respondent No. 1

MR MG NAGARKAR for Respondent No. 2

MR BB NAIK for Respondent No. 2

RULE SERVED for Respondents No. 3-4, None appeared

MR NIGAM R SHUKLA for Respondents No. 5-8

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/12/2001

ORAL JUDGEMENT

Present Special Criminal Application has been filed by the Deputy Director, Directorate of Revenue Intelligence against the order dated 16-8-2000 passed below Ex.301 in Sessions Case No.162 of 1994 by the learned Addl. Sessions Judge, Court No.5, Ahmedabad City, whereby he has declined to exhibit the statement dated 4-11-1993 of Shri Achint Navinbhai Patel alias Mahesh Shah recorded under Sec.67 of the NDPS Act, 1985 by the Intelligence Officer, DRI, Zonal Unit, Ahmedabad.

2. The proceedings have been generated when a consignment has been intercepted at the Air Warehouse, Mumbai, which was meant for export to Nairobi. When the consignment was found to be containing a very huge quantity of Mandrex tablets (Methaqualone), Dr.Bipin Shantilal Panchal and others were arrested in connection with the aforesaid seizure of narcotic or psychotropic substance and further led to a seizure of huge quantity of Mandrex tables totalling in all about 2000 kgs. Pursuant to said seizure, a complaint was filed by the Directorate of Revenue Intelligence, Ahmedabad against Dr.Bipin Shantilal Panchal and others under the provisions of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. At the end of investigation, charge-sheets were submitted and case was registered as Sessions case No.162 of 1994 at City Civil & Sessions Court, Ahmedabad, and same is being tried by the learned Additional City Sessions Judge, Ahmedabad.

3. To prove the case against the accused, the prosecution has examined number of witnesses. When Daniel Rajkumar Wellington, the Superintendent, Central Excise, was put in the witness box as its witness No.23 at Ex.301 before learned Judge on 16-8-2000, learned Public Prosecutor began asking his first question to this witness and the Court has started to record the same in question and answer form. For the first question which was asked by the learned P.P. in Gujarati, the witness has answered in English and therefore, the Court had started asking questions to this witness. In all, three questions were asked to this witness which were about the understanding of the Gujarati language and Court had noted down the answers in Gujarati. Here also, the witness has given the answers in English. When there was an allegation that this particular witness has recorded certain statements under the provisions of Sec.67 of the NDPS Act in Gujarati language, the Court has presumed that the witness is knowing Gujarati. Thereafter, the Court has decided to record the deposition of this witness in English. The witness has deposed that "I recorded the statement of one Achint Navinbhai who is

accused No.1 in this case. The said statement was recorded under Sec.67 of the NDPS Act. The statement is recorded in his own handwriting. I was asking questions to Achint Navinbhai in mixed languages." Again the witness has deposed that "I am shown Mark 61/7. Heading is written by me in English and statement has been written by accused himself. At the foot of every pages, I have signed the same as before me. Deponent also had signed the same. I produce it on record." It is revealed from the order passed by the Court below that at that stage, learned advocate for the accused, Mr.N.R.Shah, has raised objection wherein the Court has come to the conclusion as under:

> "It is absolutely necessary that person who has recorded statement must know that what is written in the same is true and he has to satisfy himself then and then only this document can be exhibited. It is absolutely necessary for him to read the statement and explain it to the Court and thereafter it can be considered whether it can be considered to be exhibited or not ?"

Thereafter, the witness was given an opportunity to read the said statement. It is stated by the Court that though the witness is reading the same in Gujarati, he has consumed much time and if the statement had been recorded in Gujarati, he was supposed to know the meaning of the statement recorded by him. When learned P.P. has requested the Court to give the witness again an opportunity to read, the Court has stated as under:

> "I may state that before entering into box he might be knowing the contents of the statement and to avoid that position it is absolutely necessary that he has to read the same in open court loudly."

When reading of the statement in the open Court loudly was objected by the learned P.P., the objection was not sustained by the Court by observing that Court is having sufficient power to compel the witness to read the statement loudly and hence, witness was again compelled to read the statement loudly. Thereafter, it was stated by the Court as under:

> "I may state that in open Court he has red the statement with some grammatical mistakes."

It was further stated by the Court below as under:

"he has taken fourteen and a half minutes to go through the complete statement and that itself suggests that in reading two pages he has taken this much time. Here, it is not a question of tution of Gujarati language, the court is expecting some fluency from the witness to read the statement recorded in Gujarati language."

It was further stated by the Court below as under:

"It can be gathered from the statement itself that only accused has written statement."

Thereafter, it was stated as under:

"a person is supposed to know about punctuation marks .... he must know that where the sentence is to be broken. Here, in a broken language the said statement has been read over by the concerned witness..... There is difference between relevancy and admissibility ..... to exhibit a document is not a mechanical process but court has to apply its mind to exhibit the document which is considered to be a judicial order and the court has to pass a judicial order by considering the rationality of the same."

Ultimately, Court below has come to the conclusion as under:

"The court has discretionary powers to decide whether document can be admitted or not. Considering all these aspects, I have no hesitation to conclude that it is doubtful whether statement can be said to be made voluntarily or not. Hence, the objection raised by the defence side is hereby sustained and document will not be taken on record and will not be exhibited."

Therefore, the present petition has been filed to quash and set aside the aforesaid order passed by the Court below.

4. Heard Mr.D.N.Patel, learned Senior Central Government Standing Counsel for the petitioner-D.R.I., Mr.S.S.Patel, learned A.P.P. for the respondent No.1-State and Mr.B.B.Naik, learned counsel for the respondent No.2, who is the main contesting party. Previously, Mr.M.G.Nagarkar, learned counsel, was appearing for the respondent No.2. Though rule was duly

served upon respondent Nos.3 and 4, none appeared on their behalf. Mr.Nigam Shukla, learned counsel appeared for the respondent Nos.5 to 8.

5. This matter came up for final hearing before this Court on 29-11-2001. However, it was adjourned to 5-12-2001 as a joint request was made by the learned counsel appearing for the respective parties and thereafter, matter was adjourned to 12-12-2001. Thereafter, learned counsel for the parties were heard on 12-12-2001 and it remained as overnight part heard. Today also, learned counsel for the parties were heard.

6. Mr.D.N.Patel has taken me through the detailed order passed by the Court below more particularly towards page Nos.33 and 34 of the compilation wherein it was deposed by the witness as under:

> "I recorded the statement of one Achint Navinbhai who is accused No.1 in this case. The said statement was recorded under Sec.67 of the NDPS Act. The statement is recorded in his own handwriting. I was asking questions to Achint Navinbhai in mixed languages."

The witness has further deposed as under:

> "I am shown Mark 61/7. Heading is written by me in English and statement has been written by accused himself. At the foot of every page, I have signed the same as before me. Deponent also had signed the same. I produce it on record."

Mr.D.N.Patel has argued that since all the ingredients for exhibiting the document in question i.e. mark 61/7, have been duly proved by the witness, it was required for the Court to have exhibited the said document without entering into the merits or demerits of the statement in question and without going into the evidential value of the said document and as the Court below was not legal, just and proper in passing the order in question, same requires to be quashed and set aside.

7. Whereas Mr.B.B.Naik, learned counsel for the respondent No.2, who is the main contesting party, has contended that cogent reasons have been assigned by the Court below for not exhibiting the document in question and, therefore, order passed by the Court below is not required to be interfered and this petition is required to be dismissed.

8. Facts established from page Nos.33 and 34 of the compilation of this petition which have been reproduced by me above, i.e. the deposition given by the witness, Daniel Rajkumar Wellington, would lead to only conclusion that the document is required to be exhibited. Court below is expected to know the difference between exhibiting the document and seeing the evidential value of the document in question. It appears that the Court below has tried to mix up the things by deciding the evidential value of the document at the preliminary stage of examining the witness in the witness box and when the witness has proved the ingredients for exhibiting the document in question, it was required for the Court below to have exhibited the same. If it does not want to exhibit the same, it should have given sufficient reason within its compass. Instead of doing so, it has practically decided the evidential value of the document in question, which is uncalled for and, hence, order cannot be sustained. It reflects from the order itself that witness is knowing Gujarati and has loudly read the statement in question in Gujarati twice in the witness box as directed by the Court. But it is stated by the Court that witness has taken fourteen and a half minutes to read the statement by stating as under:

> "Here, it is not a question of tution of Gujarati language, the court is expecting some fluency from the witness to read the statement recorded in Gujarati language ..... a person is supposed to know about punctuation marks. At the same time when person is knowing particular language he must know that where the sentence is to be broken.

Stating as aforesaid, the learned Judge did not exhibit the document. Fact also remains that witness has categorically deposed in the Court that he is knowing Gujarati and statement has been written by accused Achint Navinbhai Patel in his presence and thereafter it was signed by him and witness has also signed on each page of said statement. When Court itself has come to the conclusion on page No.36 of the compilation that "I may state that in open court he has read the statement with some grammatical mistakes", it was the duty of the Court below to have exhibited the same. Instead of doing so, he has discussed the merits and demerits of the document at the preliminary stage itself and, therefore, order is required to be quashed and set aside and direction is required to be given for exhibiting the document, i.e. mark 61/7 by allowing the present petition. It is required to be noted that the evidence of this witness

has been recorded by the same Court in Gujarati on 11-8-1997 in Sessions Case No.236 of 1994.

9. Having regard to the above facts and circumstances of the case, order dated 16-8-2000 passed below Ex.301 in Sessions Case No.162 of 1994 by the learned Addl. Sessions Judge, Court No.5, Ahmedabad City, is hereby quashed and set aside. Court below is directed to exhibit the document in question i.e. mark 61/7 and record the further evidence of said witness and complete the trial as expeditiously as possible keeping in mind the directions given by Apex Court as well as this High Court for speedy completion of trial. Rule is made absolute accordingly. The rights of the parties especially regarding contents of the document in question are kept open. The observations made by this Court in this order shall not come in the way of the parties at the time of trial.

(R.P.DHOLAKIA,J.)

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